

## REMARKS

In the above reference Office Action, claims 1-15 were rejected under various grounds. Applicant respectfully traverses.

Numerous objections to the claims were raised, primarily regarding dependency and antecedent basis issues related to dependency. Through the above amendments, these objections have been obviated.

Claim 13 was objected to for failing to further limit independent claim 12, from which it now properly depends. This objection is respectfully traversed. Claim 12 includes a non-programmable, non-volatile memory circuit and a connector element configured to couple to a programmable non-volatile memory module, and a detector circuit in operable electrical contact with the connector element configured to detect the presence of the programmable non-volatile memory, among other things. As the claimed structure includes a mechanism for detecting whether a non-volatile memory module is or is not present, claiming the inclusion of a non-volatile memory module does indeed further limit the claim. Having a circuit through which such a module may be utilized does not "inherently" contain the optional memory module. As such, the objection is improper and should be withdrawn.

Claims 1-15 were rejected over a single reference (Velez) under 35 USC 102 and/or 103. These rejections are respectfully traversed. As the Examiner is undoubtedly aware, a proper rejection under 35 USC 102 requires that a reference teach each and every element of a properly construed claim. As Velez does not teach a device that includes the optional incorporation of a programmable memory into a functioning implantable medical device, the rejection is improper and must be withdrawn.

Initially, it is noted that an important feature of at least one claim (e.g., claim 1) has been misinterpreted. In construing the claims, the Examiner should use the broadest *reasonable* interpretation of the claim language. Identifying a dictionary definition in an of itself is not a relevant claim construction. In considering the claims and the specification, it is readily apparent that excluding

the programmable memory means to not include it in later builds of a given model of a device. Thus, the notion that "removing from consideration" is a valid claim interpretation is improper. Furthermore, even under such a construction Velez does not teach the claimed invention. To avoid any further confusion, Applicant has changed "exclude" to "does not include." As this change was made due to the Examiner's interpretation and the Examiner later indicates that it should be "physical removal", this is not a "new issue."

The claimed invention relates to a product line of medical devices. In early implementation of actual device (as opposed to "test" versions) programmable memory is included. As the software is later finalized, it is stored on a non-programmable memory in later versions of the same model of the medical device in that product line.

Velez merely teaches a device that always has RAM and ROM. Instructions are stored in RAM during testing and then moved to ROM for the first actual product in that product line. Velez does not teach "not including" a particular memory component in later production of a model nor does it teach circuit configured to determine whether or not that particular memory component is present and if so, then to obtain operating instructions from that component.

Furthermore, despite the characterization of the rejection under section 102, the Examiner alludes to a 103 rejection in that "physical removal" is an "alternative equivalent." This is simply unsupportable and finds no basis in fact from any cited reference. Rather, the reference explicitly teaches always having RAM and ROM and that it would be undesirable (and therefore explicitly teaches away) to remove the RAM. Col. 3, lines 1-21. Velez is explicit in that all production versions will include both RAM and ROM. As such, the rejection is improper and must be withdrawn; furthermore, any rejection under 35 USC 103 would also be improper.

Applicant respectfully asserts that the pending claims are in condition for allowance and requests notice of the same. Should any issues remain outstanding, the Examiner is urged to telephone the undersigned to expedite prosecution.

Respectfully submitted,

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